IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 540 OF 2007
IN
CRIMINAL APPEAL NO. 432 OF 2007

Gajanan Shankar Pathkulkar and anr. ..Applicants

Vs.

The State of Maharashtra ..Respondent

Mr. Shirish Gupte, Senior Counsel with Mr. Sudatta Patil i/by Mr.Avinash Chingale for applicants.

Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Reserved on : September 21, 2007.

Pronounced on : September 27, 2007.

P.C.:

1. This is an application for bail pending Criminal Appeal No. 432 of 2007 filed by the applicants. Mr. Gupte the learned Senior Counsel referred to the depositions of PW 2 - Bhangwan Mukinda Survase, ASI, PW 7 - Mohan Anantrao Vidhate, PI and PW 6 - Dinesh Manohar Katake, API in support of his contentions that the accused were not informed about their right for being searched before a Magistrate and they were only told that their search could also be

taken before a Magistrate and consequently the mandate of Section 50 of the N.D.P.S. Act was violated. As per Mr. Gupte this was a prima facie case sufficient to suspend the order of sentence and release the accused on bail. He also stated that accused no.1 is of the age of 70 years.

2. The submissions made by Mr. Gupte appeared to be impressive but on closer scrutiny, it is noted that the contraband substance (Ganja in the instant case) was not found or seized from the person of the accused and on the other hand it was recovered/seized from the car bearing No. MH-09/610 and accused no.2 was the driver of the same car. If the contraband substance was not recovered from the person of the accused, Section 50 of the N.D.P.S. Act would not come into play, as has been held by the Apex Court in the following decisions:-

(a) Birakishore Kar vs. State of Orissa [(2000) 9 SCC 541].

(b) Madanlal and anr. vs. State of H.P. [2003 SCC (Cri) 1664].

(c) Megh Singh vs. State of Punjab [(2003) 8 SCC 666].

3. Hence, the application for bail which was pressed only on the ground that the mandatory requirements of Section 50 of the N.D.P.S. Act were not fulfilled, must fail and the same is hereby rejected.

(B.H. Marlapalle,J.)